S.B. Sales Tax Revision Petition No.74/06
M/s. Haziz Jullah Abdul Majid
Vs.
Assistant Commercial Taxes Officer

Date of Order : 28/07/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. J.N. Sharma, for petitioner

Instant revision petition has been filed against the order of Assessing Authority whereby penalty of Rs.27,000/- has been imposed upon the petitioner in exercise of power u/s.78(5) of the Act and the appeal preferred before the Dy. Commissioner [Appeals] and so also Tax Board does not find any favour in the revision petition.

Facts, which have come on record, are that certain goods were transported through Truck No.RPZ-1797 and when it was checked on 26th September, 2000, at Ajmer Road check-post, the vehicle driver was unable to produce the relevant bill/challan and accordingly, show cause notice was issued and after taking note of explanation, the Assessing Authority recorded a finding that vehicle driver was unable to produce the relevant bill/challan in relation to goods and documents which were produced by the owner of the goods at a later stage was an after thought, only to save from levy of penalty. Consequently, in exercise of power u/s.78(5) imposed penalty of Rs.27,000/-. Against the said order, the petitioner-assessee preferred appeal before the Dy.

Commissioner [Appeals] and so also Tax Board, but he failed at both the stages and the finding recorded by the Assessing Authority while exercising his power was affirmed.

Counsel for revision-petitioner submits that once the documents were produced, the Assessing Authority was under an obligation to hold an inquiry which pre-supposes u/s.78(5) before the penalty has been inflicted. According to him, the Authority has failed to exercise his power judiciously and finding, which has been recorded of intention to evade tax is not being substantiated by material on record and despite the submissions made before the Dy. Commissioner [Appeals] and so also Tax Board, they have failed to consider the same.

In my opinion, the Assessing Authority has recorded a finding after affording opportunity to the assessee and so also after taking into consideration material about the fact that it is an after though and this fact remain undisputed when the document being not produced despite demand at check post and at a later stage story has been concocted to save from liability of tax. The finding recorded by the Assessing Authority has been affirmed at both the two stages. I do not find any error in this regard.

As regards the judgment on which counsel placed reliance in **Mahaveer Conductors Vs. A.C.T.O. [(1997) 104 STC 65]** was the case where this court observed that the Assessing Authority was under an obligation to hold an inquiry as contemplated under the Act and merely non-production of document will not ipso facto make him liable to impose penalty.

So far as the present case is concerned, inquiry has been undertaken and after taking note of document placed on record, the Assessing Authority has recorded a finding of fact affirmed upto the Tax Board. In my opinion, sufficient compliance has been made in the light of what has been observed by this court. I do not find any question of law which requires interference in the present revision petition.

Consequently, the revision petition fails and is hereby dismissed.

[Ajay Rastogi],J.

FRB